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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 JERRY RAY CAVINS,

No. 2:03-cv-0929-MCE-KJM-P

12 Petitioner,

13 v.

ORDER

14 MELVIN HUNTER, et al.,

15 Respondents.
16 _____/

17 Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this
18 court's July 11, 2006 dismissal of his application for a writ of habeas corpus. Before petitioner
19 can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R.
20 App. P. 22(b).

21 A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has
22 made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).
23 When, as here, the district court denies a habeas petition on procedural grounds without reaching
24 the prisoner's underlying constitutional claims, a certificate of appealability should issue when
25 the prisoner shows that jurists of reason would find it debatable whether the petition states a
26 valid claim of the denial of a constitutional right and that jurists of reason would find it debatable

1 whether the district court was correct in its procedural ruling. Slack v. McDaniel, 529 U.S. 473,
2 484-85 (2000). The certificate of appealability must “indicate which specific issue or issues
3 satisfy” the above requirements. 28 U.S.C. § 2253(c)(3).

4 The court finds that jurists of reason would find it at least debatable whether the claims
5 asserted in petitioner’s second amended petition for writ of habeas corpus state valid claims of
6 the denial of constitutional rights. Also, jurists of reason would find it at least debatable whether
7 it was correct to dismiss this action as moot. Therefore, the court will grant petitioner’s request
8 for a certificate of appealability.

9 Petitioner also asks that the court appoint counsel on appeal. Good cause appearing,
10 petitioner’s request will be granted.

11 Accordingly, IT IS HEREBY ORDERED that:

12 1. Petitioner’s July 19, 2006 request for a certificate appealability is granted; and

13 2. Petitioner’s July 19, 2006 request for appointment of counsel on appeal is granted.

14 DATED: August 8, 2006

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18 MORRISON C. ENGLAND, JR.
19 UNITED STATES DISTRICT JUDGE
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